

apply to customs and border protection officers appointed in primary and secondary positions. A mandatory separation under section 8335(b) is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter. Section 831.502 provides the procedures for requesting an exemption from mandatory separation.

(b) In the event an employee is separated mandatorily under 5 U.S.C. 8335(b), or is separated for optional retirement under 5 U.S.C. 8336(c), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position which did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart, such separation will be considered erroneous.

(c) The customs and border protection officer mandatory separation provisions of 5 U.S.C. 8335(b) do not apply to an individual first appointed as a customs and border protection officer before July 6, 2008.

**§ 831.1609 Reemployment.**

An employee who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment in any position except a primary position after age 60. Service by a re-employed annuitant is not covered by the provisions of 5 U.S.C. 8336(c).

**§ 831.1610 Review of decisions.**

(a) The final decision of the agency head issued to an employee as the result of a request for determination filed under § 831.1606 may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of the agency head denying an individual coverage while serving in an approved secondary position because of failure to meet the conditions in § 831.1604(a) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

**§ 831.1611 Oversight of coverage determinations.**

(a) Upon deciding that a position is a customs and border protection officer position, the agency head must notify

OPM (Attention: Associate Director, Retirement Services, or such other official as may be designated) stating the title of each position, occupational series, position description number (or other unique identifier), the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position.

(b) The Department of Homeland Security must establish and maintain a file containing all coverage determinations made by the agency head under § 831.1603 and § 831.1604, and all background material used in making the determination.

(c) Upon request by OPM, the Department of Homeland Security will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, the Department of Homeland Security must submit to OPM a list of all covered positions and any other pertinent information requested.

**§ 831.1612 Elections of Retirement Coverage, exclusions from retirement coverage, and proportional annuity computations.**

(a) *Elections of coverage.* (1) The Department of Homeland Security must provide an employee who is a customs and border protection officer on December 26, 2007, the opportunity to elect not to be treated as a customs and border protection officer under section 535(a) and (b) of the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, 121 Stat. 2042.

(2) An election under this paragraph (a) is valid only if made on or before June 22, 2008.

(3) An individual eligible to make an election under this paragraph who fails to make such an election on or before June 22, 2008, is deemed to have elected to be treated as a customs and border protection officer for retirement purposes.

(b) *Exclusion from coverage.* The provisions of this subpart and any other specific reference to customs and border